

REMARKS

Status of the Claims

Claims 5, 6, 20 and 21 are pending.

Election of Species Requirement

The Examiner has required election of allegedly patentable distinct species, namely “peptide linkers having different amino acid length and peptide sequence.” (Election of Species Requirement, page 2). It was asserted that:

The species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species. Examples of such characteristics are distinct amino acid sequences, length, different molecular weight and possibly binds to different DNA sites. In addition, these species are not obvious variants of each other based on the current record. See, e.g., Fig. 4A.

Applicants submit that the election requirement does not adequately set forth the basis for the election requirement and is not adequately supported by sufficient reasoning based on the facts of the case.

In particular, the current record is extensive in this case and establishes that the peptide linkers do not bind DNA. Thus, species cannot be selected on this basis. Likewise, the molecular weight of the claimed linkers is utterly irrelevant to the subject matter of the pending claims. With regard to amino acid sequence, the record also establishes that the particular residues are not critical, so long as they are not naturally occurring. Thus, in the context of the pending claims, the allegedly distinct species of binding to different DNAs, molecular weights and sequences do not correspond to claimed features of the peptide linkers. Accordingly, no election should be required.

With regard to the alleged species of amino acid length, Applicants note that this applies only to newly presented claim 21. Accordingly, Applicants elect, **with traverse**, a peptide linker of 10 amino acids length, which reads on all pending claims.

In addition to the failure to support the election requirement with sufficient reasoning, Applicants also traverse on the grounds that a search for each allegedly distinct species is not

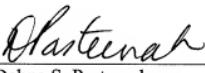
unduly burdensome and, indeed, has already been conducted. This case has a lengthy prosecution history, including an entire Appeal of claims 5, 6 and 20 in their current form. All prosecution and the appeal were conducted without any need for an election of species. Thus, because a complete search has already been conducted for the full scope of claims 5, 6 and 20, it is not burdensome now and, again, election should not be required.

Finally, it is to be understood that the election of species with regard to claim 21 is solely for the purposes of preliminary search and examination only, and that upon allowance of a generic claim, applicants will be entitled to consideration of claims to the additional species.

Applicants believe that the claimed subject matter is now in condition for allowance and early notification to that effect is respectfully requested. If any issues remain to be addressed, the Examiner is encouraged to telephone the undersigned.

Please address all correspondence to the undersigned.

Respectfully submitted,

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